

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

NATIONAL ASSOCIATION OF LETTER CARRIERS

and

Case 5-CA-29667

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION, LOCAL 2, AFL-CIO

*Elicia L. Marsh-Watts, Esq.*, for the General Counsel.  
*Charles W. Gilligan and Daniel J. McNeil, Esqs. (O'Donoghue & O'Donoghue)*, of Washington, D.C., for the Respondent Employer.  
*David R. Levinson, Esq.*, of Washington, D.C., for the Charging Party.

SUPPLEMENTAL DECISION

Original Decision and Remand Order

The Conclusions of Law in my original Decision, dated December 11, 2001, reads:

The Respondent Employer did not violate Section 8(a)(1) of the Act on January 31, 2001, as alleged, when it prohibited bargaining unit employees from wearing and displaying on the exterior of their cubicles the union-related placards, which were large 11 x 14 handwritten signs, with bold black printing on fluorescent poster board in orange, pink, and other bright colors and which offended both its dress code standard for a professional office environment in its national headquarters office and its policy prohibiting posting material on the exterior of the employees' cubicles.

The Board's April 23, 2003 Decision and Order Remanding, 338 NLRB No. 151 (2003), states in part:

The administrative law judge recommended that the complaint be dismissed, but did not clearly explain his reasoning, beyond observing that the Board decisions cited by the General Counsel and the Charging Party Union did not apply to the circumstances of this case. Accordingly, on remand, the administrative law judge should set forth a complete legal analysis, including relevant case law, on the issue of whether the Respondent lawfully prohibited employees from (1) wearing large fluorescent poster-board signs in its national headquarters office, and (2) displaying the same signs on the exterior walls of the employees' workplace cubicles.

ORDER

The administrative law judge shall prepare a supplemental decision setting forth his analysis, conclusions of law, and a recommended Order, as appropriate, on remand.

Legal analysis

This is apparently a unique case in which a union, after protracted contract negotiations,

resorted to having members wear large picket-style, poster-board signs inside the workplace.

As found, on January 31, 2001, a year after the Union's agreement with the Respondent Union Employer expired, employees met at Shop Steward Arline Terry's desk before work and made large 11 x 14 handwritten signs, with bold black printing on fluorescent poster board, which was in orange, pink, and other bright colors. The signs read, for example, "ONE YEAR WITHOUT A CONTRACT OPEIU LOCAL 2."

Then, instead of picketing outside the building, they began wearing the signs on the job.

When Employer Secretary-Treasurer William Yates saw Terry wearing two of the signs—hanging from around her neck on the front and back of her clothing—he told her, as Terry credibly testified:

You guys have to take those signs off. You can't be wearing the signs. You can walk up and down all you want outside wearing signs but not in the office. . . . It's a violation of the dress code. . . . we're not going to have you wearing them in the building.

Meanwhile Assistant Secretary-Treasurer Jan Broendel approached Terry and told her that employees had to take down all the signs posted that morning on the exterior of their work cubicles.

As further found, Yates had issued in 1997 the Employer's dress code, which sets the standard for "a professional office environment" at its national headquarters office in Washington, D.C. It requires "neatness and professional good taste" in dress and appearance for "the impression we make on visitors to the building." It specifically prohibits the wearing of denim jeans, T-shirts with any slogan or imprint, sweat suits, jogging suits, bicycle pants, and shorts." It states that shoes should be businesslike, but the Employer's practice is to permit the wearing of sandals and athletic shoes.

The Employer's policy prohibiting posting of material on the exterior of cubicles has been in effect from before 1994, when Yates succeeded the former secretary-treasurer who advised him that the policy was uniformly enforced. Although the policy is not in writing, the evidence indicates that the policy is well understood.

In its brief (at 10), the Union contends that the "Employer argues at length at the [trial] that the employees have other means of demonstrating their support for [the Union] besides the disputed placards [worn on the job and posted on the exterior of the employees' cubicles]." The Union then contends: "This argument seems to misapply the cases involving protected [picketing] activity by **non-employees** [emphasis in original], where such an inquiry is applicable. See, e.g. *Scott Hudgens*, 230 NLRB 414 [1977], on remand from *Hudgens v. NLRB*, 424 U.S. 507 [1974]; *NLRB V. Babcock & Wilcox*, 351 U.S. 105 [1965]."

This is a misstatement of the Board's decision in *Scott Hudgens*. That case (230 NLRB at 418) did not involve "non-employees." It involved employees of employers doing business in shopping malls. Clearly, the Union had the alternative of picketing outside the building, instead of having employees of the Employer wear and post the large fluorescent poster-board signs in its national headquarters office.

In fact, as Shop Steward Terry testified (Tr. 118–120), they later recycled the poster board and used it as picket signs when picketing outside the building—taping small handwritten signs on the picket signs, showing the number of days without a contract.

In the absence of any precedent for finding that employees have a Section 7 right to wear picket signs inside the workplace while at work, the General Counsel relies (Br. 18) on the often-cited Supreme Court decision, *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 795, 801–803 (1945), which involved, in part, the discharge of employees for wearing union buttons in a plant. The Court ruled that absent “special circumstances,” the promulgation or enforcement of a rule prohibiting the wearing of *union insignia* violates Section 8(a)(1) of the Act.

As the General Counsel points out (Br. 18–19), “The Board has found that the right to wear union insignia at work [in decisions citing *Republic Aviation*] applies to various items,” listing examples of “union insignia” in the following cases:

*Painting Co.*, 330 NLRB 1000, 1000 (2000) (union T-shirts); *Escanaba Paper Co.*, 314 NLRB 732, 732–735 (1994), enfd. 73 F.3d 74 (6th Cir. 1996) (“scab” buttons); *Midstate Telephone Corp.*, 262 NLRB 1291, 1291–1292 (1982) enfd. denied in relevant part 706 F.2d 401, 403–404 (1983) (T-shirts with strike-survivor message); *St. Luke’s Hospital*, 314 NLRB 434, 434–435 (1994) (2-by-4 inch sticker on hospital uniforms); *Meijer, Inc.*, 318 NLRB 50, 57 (1995) (union insignia on jacket worn in noncustomer area); *Northeast Industrial Service Co.*, 320 NLRB 977, 977 fn. 1 (1996) (union stickers on hardhats); *Feldkamp Enterprises*, 323 NLRB 1193, 1201 (1997) (union sticker on hardhats); and *Malta Construction Co.*, 276 NLRB 1494, 1494–1495 (1985) (union stickers on hardhat).

Thus, these examples show that the Board has held that “union insignia” includes union buttons, union message on T-shirts, small sticker on uniforms, union insignia on jacket, and stickers on hardhats—but nothing resembling picket signs worn in an office.

The Union in its brief (at 5–10) lists additional court and Board decisions, which apply the *Republic Aviation* rule that in the absence of “special circumstances,” wearing union insignia at work is generally protected. These decisions also apply the rule to similar items of “union insignia,” as follows:

*Pioneer Hotel v. NLRB*, 182 F.3d 939, 946 (D.C. Cir. 1999) (pins, stickers, and buttons); *NLRB v. Autodie International, Inc.*, 169 F.3d 378, 384 (6th Cir. 1999) (pins and union insignia on hats); *Flamingo Hilton-Laughlin*, 330 NLRB 287, 287, 292 (1999) (union pins and decals); *Eby-Brown Co.*, 328 NLRB 496, 516–517 (1999) (union name on back belts); *Woonsocket Health Center*, 245 NLRB 652, 658–659 (1979) (union badges); and *Mack’s Supermarkets*, 288 NLRB 1082, 1098–1099 (1988) (prounion baseball type cap).

Neither the General Counsel nor the Union has indicated how the phrase “union insignia” could be interpreted to include the type of signs worn in the office in this case before the signs were ordered removed (GC Exhs. 3, 6).

The Employer contends in its brief (at 16):

“[N]one of the cases cited by the General Counsel or the Charging party will involve facts where the so-called union insignia are signs constructed by fluorescent pink, orange, and green poster board that measure 11 x 14 inches. . . . When all of the circumstances are examined in this case, the size and color of the posters worn by Local 2 employees and the manner in which they were displayed, clearly [the Employer] was justified in limiting such displays and maintaining a professional office environment.

I find that the Supreme Court’s ruling in *Republic Aviation* regarding the wearing of “union insignia” in the workplace does not apply to the union members’ wearing these

5 bargaining signs, which protest their having to work a year without a contract and which are large fluorescent poster-board signs—worn sandwich-board style as on a picket line—inside the Employer’s national headquarters office, violating the Employer’s longstanding dress code setting the standard for a professional office environment and requiring “neat and professional good taste” in dress and appearance for “the impression we make on visitors to the building.”

10 Regarding the display of these same signs on the exterior walls of the employees’ workplace cubicles, the evidence does not support the allegation in the complaint that on January 31, 2001 the Employer, “by oral directive,” promulgated and maintained a rule prohibiting employees from “posting union-related signs around [the Employer’s] offices in places where they had previously been permitted.”

15 There was a longstanding policy prohibiting the posting of any material on the exterior walls of the cubicles and, under that policy, there had been no union-related signs permitted to be posted there.

20 I find that the Supreme Court’s ruling in *Republic Aviation* likewise does not apply to displaying the same large fluorescent poster-board signs on the employees’ workplace cubicles, violating the Employer’s longstanding policy against posting any material on the exterior walls of the workplace cubicles for the purpose of maintaining a professional office environment.

#### Conclusions of Law

25 The Respondent did not violate Section 8(a)(1) of the Act on January 31, 2001 by prohibiting employees from (1) wearing large fluorescent poster-board signs in its national headquarters office, and (2) displaying the same signs on the exterior walls of the employees’ workplace cubicles.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

35 The complaint is dismissed.

Dated, Washington, D.C. May 12, 2003

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Marion C. Ladwig  
Administrative Law Judge

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<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.